

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CALVIN REED,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

USDC SDNY
DOCUMENT
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DATE FILED: 02/07/2023

20-CV-8352 (JHR) (BCM)

ORDER OF SERVICE

BARBARA MOSES, United States Magistrate Judge.

Plaintiff, currently incarcerated in the Fishkill Correctional Institution in Beacon, New York, brings this *pro se* action against various individuals affiliated with the New York City Police Department, alleging violations of his constitutional rights as well as state law. Plaintiff filed his original Complaint on October 5, 2020. (Dkt. 2.) On December 7, 2020, the Court granted plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP). (Dkt. 5.)

The Court held an initial case management conference on August 30, 2022, by telephone, and gave plaintiff until September 30, 2022, to file his Second Amended Complaint. (Dkt. 54.) At plaintiff's request (Dkt. 58), the Court then extended that deadline another 30 days. (Dkt. 59.)¹

On October 25, 2022, plaintiff filed his Second Amended Complaint (SAC), in which he names the City of New York; Police Officers Dennis and Mejia; Detectives Saxon and Santana; and John Does #1-#6. (Dkt. 60.) On November 15, 2022, Dennis answered the SAC. (Dkt. 61.) On November 21, 2022, I issued an Order of Service which directed the U.S. Marshals Service to serve the SAC on Mejia, Santana, and Saxon. (Dkt. 63.) Although the New York City Law Department provided an address for Saxon, the SAC listed an incorrect address. (Dkt. 70.) When the U.S. Marshals Service attempted service on Saxon on January 8, 2023, at the address listed on the SAC, the server was informed that Saxon "does not work at [this] location." (Dkt. 70.)

¹ See the November 21, 2022 Order of Service (Dkt. 63) for a more complete procedural history.

Service on defendants Mejia and Santana was effected on January 6, 2023. (Dkts. 68-69.) On January 27, 2023, Mejia and Santana answered the SAC. (Dkt. 72.) On February 3, 2023, the parties filed a joint status report which provided an updated address for defendant Saxon (New York City Police Department, Transit District 12, 460 Morris Park Avenue, Bronx, New York 10460), as well as an updated address for plaintiff (Calvin Reed, DIN # 22B2865, Fishkill Correctional Facility, 271 Matteawan Road, P.O. Box 1245, Beacon, New York 12508). (Dkt. 74.)

DISCUSSION

Because plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, because the Marshals Service was unable to accomplish service, the Court *sua sponte* extends the time to serve the SAC on defendant Saxon. If the SAC is not served within that time, plaintiff should request an extension of time for service. *See Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

CONCLUSION

To allow plaintiff to effect service on defendant Saxon through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for Saxon at the following address: New York City Police Department, Transit

District 12, 460 Morris Park Avenue, Bronx, New York 10460. The Clerk of Court is further instructed to (1) issue a summons which includes this updated address and (2) deliver to the U.S. Marshals Service a copy of this order and all other paperwork necessary for the U.S. Marshals Service to effect service on Saxon.

The Clerk of Court is further directed to update the docket to reflect plaintiff's current address, as follows: Calvin Reed, DIN # 22B2865, Fishkill Correctional Facility, 271 Matteawan Road, P.O. Box 1245, Beacon, New York 12508.

Dated: New York, New York
February 7, 2023

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge